

REMARKS

Status of the Application

Claims 1-12, 17-19, 33, 53 and 54 have been examined and stand rejected. Claims 13-16, 20-32, 34-52 and 55-72 are withdrawn from consideration in accord with the Response to Restriction Requirement filed June 5, 2006.

Applicants thank the Examiner for accepting the Formal Drawings filed March 7, 2002, and acknowledging the claim for foreign priority. Additionally, Applicants thank the Examiner for considering the references cited with the Information Disclosure Statements filed March 7, 2002, February 1, 2006, and June 5, 2006.

Claim Rejections - 35 U.S.C. § 112, first paragraph

The Examiner rejected claims 3, 4, 11, 12 and 19 as failing to comply with the enablement requirement. The Examiner alleges that the claims contain subject matter which was not described in the specification in such a way as to enable one skilled in the art to make and/or use the invention. In particular, the Examiner states that the claims contain “an automatic determination means which automatically makes examination,” and that the specification does not disclose how such determination can be made automatically.

In contrast, Applicants submit that the specification discloses, at a level sufficient for one of ordinary skill in the art, how to make and use the invention as claimed in claims 3, 4, 11, 12 and 19. The test of enablement is whether one reasonably skilled in the art could make or use the invention from the disclosures in the patent coupled with information known in the art without undue experimentation. MPEP § 2164.01.

Specifically, on page 45, lines 6-27 of the specification, a method for ranking a diagnosis is described. For example, a determination may be a “1: normal” or a “2: to be reexamined.” Additionally, if different doctors apply different rankings (e.g. a 1 or a 2) a weight may also be given to each doctor. As described, if doctor A determines the diagnosis as a “1: normal” and doctor B determines the diagnosis as a “2: to be reexamined,” and the weight if doctor A is 1 while the weight of doctor 2 is 0.5, the supervisor determines the diagnosis to be a “1: normal”. This is because doctor A is given more weight. Conversely, if doctor A is weighted as a 0.5 and doctor B is weighted as a 1, the supervisor’s determination would be that the diagnosis is a “2: to be reexamined.” This is a mathematical weighing method to provide a useful diagnostic result.

Furthermore, these features are described in non-limiting exemplary embodiments on page 13, lines 6-21, and page 47, line 16 through page 48, line 3.

Additionally, the present specification describes that it is possible to arrange the system so that the controller automatically makes a determination after the server 40 receives individual diagnosis. Thus, the controller may simply perform, using the disclosed mathematical weighing method, based on the weight given to each diagnosis, which diagnosis carries more weight. Obviously, based on the above described manual method of determining the result of the examination, one of ordinary skill would understand how to automate the arithmetic calculations performed manually. Because the tools for performing this manner of weighing a diagnosis in an automated fashion is well known in the art (i.e. ordinary mathematical calculations known to one skilled in the art), converting this manual operation to an automatic operation is enabled. Moreover, the “patent need not teach, and preferably omits, what is well known in the art.” MPEP § 2164.01 (citing *In re Buchner*, 929 F.2d 660, 661 (Fed. Cir. 1991)). Therefore,

Applicants submit that automating this manual activity is well within the capabilities of one of ordinary skill in the art.

Thus, Applicants submit that the automatic determination means is enabled by the present specification and that this rejection is in error.

Claim Rejections - 35 U.S.C. § 112, second paragraph

The Examiner rejected claims 3, 4, 11 and 12 under § 112, second paragraph, as being vague and indefinite because the specification does not disclose how such a determination may can be made automatically. Applicants traverse this rejection as follows.

Applicants submit that, while the specification supports the claim language rejected by the Examiner, “a claim term that is not used or defined in the specification is not indefinite if the meaning of the claim term is discernable.” MPEP §2173.02 (citing *Bancorp Services, L.L.C. v. Hartford Life Ins. Co.*, 359 F. 3d 1367, 1372 (Fed. Cir. 2004)). Thus, the rejection of these claims because “the specification does not disclose how such a determination can be made automatically,” is an improper grounds for a rejection under § 112, second paragraph. Whether on not a claim term is even used in the specification has no bearing on whether the claim term is vague or indefinite.

Thus, Applicants submit that this rejection is in error for at least this reason.

The Examiner also rejected claim 2 under § 112, second paragraph, as being indefinite. In particular, the Examiner alleges the claim is vague and indefinite because it is unclear how a system can receive via an output means. Applicants request that the Examiner withdraw this rejection in view of the self-explanatory claim amendment of claim 2 submitted herewith.

Claim Rejections - 35 U.S.C. § 102(e)

The Examiner rejected claims 1, 2, 5, 7, 8, 9, 10, 17, 18, 33, 53 and 54 as being anticipated by Wong et al. (US 6,260,021; “Wong”). Applicants traverse this rejection as follows.

Wong relates to an object oriented system and method for rapidly distributing medical images from exiting picture and report storage systems to a plurality of client workstations. The system provides image objects with uniform structure regardless of the type of system in which they are stored.

In contrast, in the present invention, diagnostic results of the same image by a plurality of doctors are correlated with the image, and a final diagnostic result is obtained based on the diagnostic results. However, such a concept and a method for embodying the invention are not taught or suggested by Wong. Thus, Applicants submit that Wong fails to disclose, at least: (1) a diagnosis means for inputting individual diagnosis; (2) the result storage means storing results of examination obtained on the basis of the individual diagnoses; (3) each of the diagnosis clients received the image data to be examined from the server and sends individual diagnoses input through the diagnosis input means for the respective images represented by the image data to be examined to the server; and (4) the server causes the result storage means to store results of examination obtained on the basis of the individual diagnoses sent from the respective clients, as recited in claim 1.

First, the Examiner cites column 4, lines 15-48 as disclosing the feature “each of the diagnosis clients received the image data to be examined from the server and sends individual diagnoses input through the diagnosis input means for the respective images represented by the

image data to be examined to the server.” However, this portion of Wong merely discloses that one or more computer systems are configured to retrieve medical report data associated with said medical image data and for presenting retrieved medical report data as medical report objects with a uniform object-oriented structure. (col. 4, lines 16-24). Additionally, this portion discloses that the one or more computer systems are further configured with one or more security object servers for checking with the authorization of a user. (col. 4, lines 33-35).

While one or more computer systems may be configured to receive medical image data and/or medical reports, nowhere is it disclosed that each computer receives the same image data. Wong is merely disclosing a distributed information system that permits computers to request image and report data. In this regard, these portions of Wong cited by the Examiner do not disclose wherein each of the diagnostic clients receives the image data to be examined and sends individual diagnosis input through the diagnosis input means. No portion of Wong discloses wherein each diagnostic client receives image data and also sends an individual diagnosis. Furthermore, this is not an inherent feature in Wong.

Second, as the same image is not necessarily sent to each of the diagnostic client, Wong fails to disclose wherein the server causes the result storage means to store results of examination obtained on the basis of the individual diagnoses sent from the respective diagnostic clients.

Thus, Applicants submit that claim 1 is allowable for at least this reason. Additionally, Applicants submit that claims 2, 5, 7, 8, 9 and 10 are allowable, at least because of their dependency from claim 1.

Additionally, with regard to the portions of Wong cited in the rejection of claims 2, 8, 10 and 18, Applicants submit that these portions do not disclose the features recited in claims 2, 8, 10 and 18. In particular, these portions of Wong disclose a communication method between objects through the ORB (Object Request Broker), setting for each user at a client workstation and a method for displaying information at GUIs (Graphical User Interfaces). The communication method between objects is a method for communicating when the client-server image distribution system is implemented as an object-oriented and three-tiered client-server system, based on CORBA (Common Object Request Broker Architecture), to distribute information among different types of systems.

Thus, Applicants submit that claims 2, 8, 10 and 18 are allowable for these additional reasons.

Similar to claim 1, because claim 17 recites “causing each of the diagnostic clients to receive a desired piece of image data” and “inputting individual diagnoses obtained on the basis of the output visible image,” Applicants submit that this claim is allowable for the same reasons argued above. Additionally, Applicants submit that claim 18 is allowable, at least because of its dependency from claim 17.

Regarding claim 33, Applicants submit that Wong fails to disclose, at least, processing of sending medical image data to a server by way of a network. As discussed above with regard to claim 1, Wong only discloses transferring a requested medical image to a single user. No portion of Wong discloses wherein medical image data is sent to a server by way of a network.

Thus, Applicants submit that claim 33 is allowable for at least this reason.

Regarding claim 53, Applicants submit that Wong fails to disclose, at least, “processing of sending a request for receiving medical image data related to a predetermined examination of image data stored in a server by way of a network,” as recited. The Examiner cites column 6, lines 1-55 as disclosing this feature. However, in contrast to the Examiner’s reading of Wong, this cited portion merely discusses retrieving medical report data associated with medical image data. It does not disclose receiving medical image data related to a predetermined examination. Furthermore, no other portion of Wong even breaks down medical report data into discrete units of an examination. Additionally, no other portion of Wong discloses this feature.

Thus, Applicants submit that claim 53 is allowable for at least this reason. Additionally, Applicants submit that claim 54 is allowable, at least because of its dependency from claim 53.

Claim Rejections - 35 U.S.C. § 103(a)

The Examiner rejected claims 3, 4, 11, 12 and 19 under § 103(a) as being unpatentable over Wong in view of Marchosky (US 2002/0029157). Applicants traverse this rejection as follows.

Marchosky is related to a medical records database and a diagnostic program wherein individual patient medical and biographical records are owned by individual patients who can enter information in their record as well as grant or deny authorization to others, such as health care professionals, to review part of their record. The diagnostic program provides a series of diagnostic questions to an individual, each potential response is weighted relative to its importance to a particular diagnosis.

Applicants submit that because Marchosky, either alone or in combination with Wong, fails to compensate for the above noted deficiency of Wong with regard to claims 1 and 17, claims 3, 4, 11, 12 and 19 are allowable, at least because of their dependency.

Thus, Applicants submit that claims 3, 4, 11, 12 and 19 are allowable for at least this reason.

Additionally, Applicants submit that Marchosky is further deficient as set forth below.

Regarding claims 3 and 4, Applicants submit that the Marchosky/Wong combination fails to teach or suggest: (1) the individual diagnoses received, as recited in claim 3 and 11; and (2) each of the diagnostic clients is provided with a function of sending data on the doctor in charge to the server, as recited in claims 4, 6, 12 and 19.

Specifically, Marchosky merely discloses a system for providing information, such as the condition of a patient (the names of diseases) and methods for treatment, for the patient in the order of the probability of a disease that the patient may have. In Marchosky, a control computer provides so-called YES/NO questions for a single computer (terminal) of the patient or the like. The YES/NO questions are questions about the condition of the patient, the medical history of the patient and the medical history of the patient's family member. Then, the central computer receives answers to the questions from the computer, and further obtains the results of various examinations of the patient from a database. Then, the central computer sorts information, such as the condition of a patient (the names of diseases) and methods for treatment information, in the order of the probability of a disease that the patient may have. The central computer sorts the information, based on the answers, the results of examinations and information for weighting each question and each examination result in each case, by correlating the information with the information for weighting.

In contrast, in the present invention, diagnostic results of the same image by a plurality of doctors are correlated with the image, and a final diagnostic result is obtained based on the diagnostic results (plural diagnoses). However, such a concept and a method for embodying the invention are not taught or suggested by Marchosky.

Thus, Marchosky fails to teach or suggest the features of the present invention that each of the diagnostic clients sends data representing a doctor in charge to a server and the data is received by the server, as recited in Claims 4, 6, 12 and 19. Further, Marchosky fails to teach or suggest the features that a plurality of diagnostic results of a single examination image (the same examination image) are received from a plurality of diagnostic clients, used by a plurality of doctors, as recited in Claims 3, 4, 6, 11 12 and 19.

Thus, Applicants submit that claims 3, 4, 6, 11, 12 and 19 are allowable for this additional reason.

Conclusion

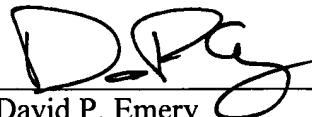
In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

Amendment Under 37 C.F.R. §1.111
U.S. Appln. No. 10/092,253

Atty. Dkt. No. Q66589

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,



David P. Emery
Registration No. 55,154

SUGHRUE MION, PLLC
Telephone: (202) 293-7060
Facsimile: (202) 293-7860

WASHINGTON OFFICE

23373

CUSTOMER NUMBER

Date: October 5, 2006